



House of Representatives
Committee on Elections

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RQ-1080

The Honorable Dan Morales
Attorney General of Texas
c/o Opinion Committee
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Opinion Committee

Dear General Morales:

On behalf of the House Committee on Elections, I am requesting an opinion regarding the proper interpretation of two sections of the Tax Code, as amended by the 75th Legislature: Sections 33.52 and 33.55.

My first questions pertain to § 33.52 of the Tax Code, which was amended during the 1997 legislative session by three different bills: Chapter 111 (HB 2587), Chapter 981 (HB 2622), and Chapter 906 (HB 3306), Acts of the 75th Legislature. The amendments appear to conflict.

My research indicates that both HB 2587 and HB 2622 were enacted on May 26, 1997¹, however, they passed on the local and consent calendar, and those bills are presented and were passed in numerical order, making HB 2622 the "latest enacted." See attachment. None of the bills contained a provision that would negate the "latest enacted" rule of the Code Construction Act, Texas Government Code § 311.025(a) and 311.025(d).

Prior to its amendment, Section 33.52 read as follows:

§ 33.52. Judgment for Current Taxes

(a) If the court orders the foreclosure of a tax lien and the sale of real property, the judgment shall order that the taxing unit recover from the proceeds of the sale the amount of tax on the property for the current tax year prorated to the day of judgment.

¹HB 3306 was enacted the day before, on May 25, 1997.
Jesse Jones, Vice Chair

Mary Denny Pete Gallego Carolyn Galloway
Terri Hodge Carl Issett Jerry Madden Allen Place
Chief Committee Clerk, Mike Dunn

(b) If the amount of tax for the current tax year has not been determined on the date of judgment, the court shall order recovery of the amount of tax imposed on the property for the preceding tax year, prorated to the date of judgment.

I have attempted to summarize the prior law and amendments to §33.52, as follows:

Under the unamended statute, the court was required, in its judgment, to order that the taxing unit recover, from sale proceeds, the property tax for the current tax year, prorated to the date of the judgment, and in the event that the current year tax amount had not been determined by the date of the judgment, the amount of the previous year's tax. Thus, this appears to have allowed an "estimate" of the current tax year figure.

The first of the three bills to be enacted in the 1997 session amending §33.52 was HB 3306. HB 3306 allowed the *option* of foreclosure on the current year taxes, and its inclusion in the judgment. HB 3306 deletes the proration language (the previous statute provided for proration to the date of judgment). It also provided for the *option* of recovering and foreclosing the amount of the preceding year's taxes if the amount of the current year's taxes had not been calculated at the date of judgment. It appears that the upshot of this bill was to transform a mandatory requirement into a permitted option. HB 3306 also created a new subsection setting out what would happen (purchaser takes subject to lien for current year's taxes) if the option of including the current year's tax amount (or its substitute) was not exercised. Penalties and interest were not addressed in HB 3306.

HB 2587 also required an affirmative act, the motion of the taxing unit, to have included in the judgment the recovery from the proceeds of sale of the property's current taxes. The concept of proration to the date of judgment is eliminated. An affirmative act of the taxing unit is also required to use the preceding year's tax amount in the judgment if the current taxes have not been calculated. HB 2587, recognizing the "optional" nature of the inclusion of current taxes, and therefore the chance that the current year's taxes may not be included in the judgment, clarifies that the tax sale does not affect the lien securing the current year's taxes or the owner's personal liability for same.

HB 2622, the "latest enacted" of the three bills affecting § 33.52, provides for the *mandatory*, not optional, inclusion of the current tax liability and makes *mandatory* the recovery from the sale *not only of the current tax liability (prorated to the date of sale) but of the tax liability for any subsequent years until sale under Section 34.01 or 34.015 and each penalty and all interest that accrues on delinquent taxes on the property from the date of judgment to the date of sale*. HB 2622, like the original section, also *requires* use of the previous year's tax amount for the current year tax calculation but makes that requirement operative if the current year tax calculation has not been made *by the date of sale (rather than date of judgment)*.

HB 2622 amended Section 33.52 to read as follows:

§ 33.52. Judgment for Current Taxes and Postjudgment Taxes, Penalties, and Interest.

(a) If the court orders the foreclosure of a tax lien and the sale of real property, the judgment shall order that the taxing unit recover from the proceeds of the sale the amount of:

(1) tax on the property for the current tax year and each subsequent tax year until the property is sold under Section 34.01 or 34.015, as applicable, prorated to the date of the sale;

and

(2) each penalty that is incurred and all interest that accrues on delinquent taxes on the property from the date of the judgment to the date of the sale under Section 34.01 or 34.015, as applicable [day of judgment].

(b) If the amount of tax for a ~~[the current]~~ tax year has not been determined on the date of the sale [judgment], the taxing unit [court] shall recover [order recovery of] the amount of tax imposed on the property for the preceding tax year, prorated to the date of sale [judgment].

The three amending bills appear to conflict in all significant areas with regard to § 33.52, and do not by their language direct what to do in the case of a conflict. Therefore, using the Code Construction Act, the bill that is enacted last, HB 2622, appears to state the current law. It is closest to the prior law with regard to the mandatory nature of recovery of current taxes, but significantly expands both the period upon which the taxes may be prorated, and the categories of charges (penalties and interest) that can be collected from the sale of property subject to the statute.

I request that you determine whether HB 2622, as enacted by the 75th Legislature, contains the current and complete expression of § 33.52, and whether the current law requires mandatory, not optional, inclusion of the current tax liability, and makes mandatory the recovery from the sale not only the current tax liability (prorated to the date of sale) but of the tax liability for any subsequent years until sale under Section 34.01 or 34.015 and each penalty and all interest that accrues on delinquent taxes on the property from the date of judgment to the date of sale.

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If, through oversight or for any other reason, current taxes are not included in the judgment (either as a general statement or a sum certain amount), is the ability of the taxing unit to recover those taxes negatively affected under current law?

I also request that you determine whether the current, complete and operative language of § 33.52 requires the use of the previous year tax amount for the current year tax calculation but makes that requirement operative only if the current year tax calculation has not been made by the date of sale (rather than the date of judgment).

I also request that you determine whether the current, complete and operative language of § 33.52 means that post-judgment taxes, penalties and interest may be collected at a foreclosure sale.

Finally, I request you determine whether Section 33.55 of the Tax Code, as added by HB 2587, Section 4, meets the threshold requirement for constitutional validity with regard to retroactive application to penalties already adjudicated in judgments which have become final on dates preceding the effective date of HB 2587.

Thank you for your assistance in this matter.

Respectfully submitted,

A handwritten signature in cursive script, reading "Debra Danburg". The signature is written in black ink and is positioned above the printed name and title.

Debra Danburg
Chair,

House Committee on Elections

HB 2096 (Patterson) Relating to the selection of depositories by navigation districts and port authorities. (31-0) (31-0)

HB 2115 (Bivins) Relating to the designation of certain highways as the future route of La Entrada al Pacifico Corridor. (31-0) (31-0)

HB 2157 (Wentworth) Relating to reporting under the sales and use tax the value of certain tickets to an amusement service purchased for resale. (31-0) (31-0)

HB 2203 (Lucio) Relating to a requirement that a municipality maintain a public record of its extraterritorial jurisdiction. (31-0) (31-0)

HB 2213 (Armbrister) Relating to municipal and county policies regarding enforcement of certain drug laws. (31-0) (31-0)

HB 2221 (Ratliff) Relating to limitations on the amount of life insurance risk that may be written by certain agents of or assumed by a stipulated premium insurance company. (31-0) (31-0)

HB 2227 (Harris) Relating to additional periods of possession or access to a child. (31-0) (31-0)

HB 2257 (Brown) Relating to the audit required for forfeited property and proceeds received by a law enforcement agency or an attorney representing the state. (31-0) (31-0)

HB 2309 (Ellis) Relating to fees charged by a justice of the peace. (31-0) (31-0)

HB 2332 (Lucio) Relating to permitting the Board of Regents of The University of Texas System to convey certain real property to a political subdivision located in Hidalgo County. (31-0) (31-0)

Senator Lucio offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend HB 2332 as follows:

(1) On page 1, line 9, after "subdivision" after before "real property" insert "an interest in."

(2) On page 1, line 12, strike "the" and substitute "a".

(3) On page 1, line 13, after "Act" and before ", the" insert "to establish a special events center".

(4) On page 2, between lines 6 and 7, insert the following:

(f) Section 31.159, Natural Resources Code, shall not apply to a contract entered into under this section.

The committee amendment was read and was adopted by a viva voce vote.

HB 2397 (Fraser) Relating to certain agreements to provide health care services under the Indigent Health Care and Treatment Act. (31-0) (31-0)

HB 2424 (Wentworth) Relating to deductions from lottery winnings and compensation of the amount of certain child support, taxes, and other payments. (31-0) (31-0)

CSHB 2437 (Sibley) Relating to the Texas Property and Casualty Insurance Guaranty Association. (31-0) (31-0)

HB 2438 (Bivins) Relating to the fire insurance rates and fire suppression ratings of a municipality at or near the state's borders. (31-0) (31-0)

HB 2469 (Ratliff) Relating to the operation of vehicles transporting timber or timber products and to the operation of vehicles transporting poles or pipe. (31-0) (31-0)

HB 2506 (Ellis) Relating to interest charged on late payment made by certain political subdivisions under a contract for goods or services. (31-0) (31-0)

HB 2512 (Shapiro) Relating to the authority of the Texas State Library and Archives Commission to accept donations and services from certain sources. (31-0) (31-0)

HB 2573 (Armbrister) Relating to fees assessed for the regulation of athletic trainers and the audit of certain financial transactions regarding that regulation. (31-0) (31-0)

HB 2587 (Sibley) Relating to the collection of delinquent property taxes and the foreclosure of tax liens. (31-0) (31-0)

HB 2606 (Ogden) Relating to the appraisal and ad valorem taxation of a retail manufactured housing inventory; providing penalties. (31-0) (31-0)

HB 2622 (Brown) Relating to liability for postjudgment taxes, penalties, and interest in a suit to collect a delinquent ad valorem tax. (31-0) (31-0)

HB 2634 (Patterson) Relating to administrative fees collected by community supervision and corrections departments. (31-0) (31-0)

HB 2671 (Harris) Relating to acceptance of an insurance binder by certain lenders. (31-0) (31-0)

HB 2731 (Armbrister) Relating to the creation of the First Colony Management District. (31-0) (31-0)

HB 2745 (Whitmire) Relating to the location of certain hearings affecting the status of alcoholic beverage permits. (31-0) (31-0)

HB 2779 (Shapiro) Relating to requiring the office of the attorney general to defend local community supervision and corrections departments in certain suits brought against them. (31-0) (31-0)

HB 2856 (Gallegos) Relating to the protection of women's health with respect to services performed at an abortion facility and the right to access certain information relating to abortion facilities. (31-0) (31-0)

HB 2866 (Harris) Relating to the completion, filing, and registration of certain death records. (31-0) (31-0)